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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LLOYD BYERS, Plaintiff and Appellant, v. WEST LA MINI STORAGE et al., Defendants and Respondents.	B266024 (Los Angeles County Super. Ct. No. SC121652)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa Hart Cole, Judge. Affirmed.

Lloyd Byers, in pro. per., for Plaintiff and Appellant.

Joe Huser for Defendants and Respondents.

Appellant, Lloyd E. Byers, in pro. per., appeals from a judgment dismissing his first amended complaint seeking damages after he was allegedly illegally locked out of a self-storage rental facility. The trial court sustained specific and general demurrers to the first amended complaint without leave to amend. We affirm.

The Pleadings

Appellant filed the original complaint in November 2013 against respondents, West LA Mini Storage and West Los Angeles Mini Storage, a California Limited Partnership. The original complaint alleged, among other things, that defendants had violated the California Self-Service Storage Facility Act (Bus. & Prof. Code,[1] § 21701 et seq.) (hereinafter, SSSFA). In a demurrer to the original complaint, respondents raised issues of nonpayment of rent and the existence of a pending small claims action to determine the parties' rights under the SSSFA. After the trial court sustained demurrers to the original complaint, appellant filed the first amended complaint, which is at issue in this appeal.[2]

The first amended complaint alleged that on August 19, 2013, appellant rented a storage unit from West Los Angeles Mini Storage for $224.00 per month with a promotional rate of 1/2 off for two months.[3] On October 7, 2013, appellant was denied

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[1] All further statutory references are to the Business and Professions Code.

[2] In response to demurrers by the respondents, appellant conceded that the original complaint was "primitive" and uncertain. The trial court sustained demurrers to the original complaint on the ground it "was uncertain and incomprehensible" and granted appellant leave to amend.

[3] The storage agreement, which is attached to the first amended complaint as exhibit F, indicates that the owner of the facility is 5450 Slauson Limited. Prior pleadings showed that the facility is owned by 5450 Slauson Limited, a California limited partnership, and managed by Self Storage Management Company. In addition to respondents, the first amended complaint named as defendants: 5450 Slauson Limited, 5450 Slauson Limited dba West Los Angeles Mini Storage, Self Storage Management Company, erroneously named as Self Storage Management Company, Inc., American Standard Development Company, erroneously named as American Standard

access to the facility when his code did not work. Appellant subsequently gained access into the facility by following another vehicle into the facility. Thereafter, appellant entered the facility by following other vehicles. However, he was unable to access his unit because an "overlock" had been placed on his unit. Appellant alleged that he was ready, willing and able to comply with his rental obligations. Claiming violations of the SSSFA, appellant sought damages under eight different theories: breach of contract (first); conversion (second); trespass and forcible detainer (third); invasion of privacy (fourth); fraud (fifth and sixth); intentional infliction of emotional distress (seventh); and negligence (eighth).

Respondents filed special and general demurrers to the first amended complaint. Respondents contended that appellant had improperly joined a number of persons and entities who were not parties to the rental storage agreement. Respondents asserted that appellant had not alleged that he had paid his rent or that the issue of respondents' compliance with the SSSFA had been decided against appellant in the small claims action.

Appellant opposed the demurrers by asserting respondents ignored allegations in the first amended complaint. Appellant claimed he was under duress. Appellant also sought leave to amend.

In its order sustaining the demurrers, the trial court noted that respondents' demurrers raised the issue of whether allegations of wrongful lockout and violations of the SSSFA were previously adjudicated in a small claims action. In sustaining the demurrers without leave to amend, the trial court stated the complaint was indecipherable. The trial court determined that the first amended complaint was predicated upon the theory that the lockout was illegal but appellant had not explained how the lockout was illegal. Appellant failed to plead compliance with his rental obligations. The general allegation of being ready, willing and able to perform was

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Development Company, Inc., National Prudential, Inc., Robert J. Abernethy, erroneously named as Robert J. Abernathy, John Lopuch and Pedro Florida.

insufficient to explain why appellant had not performed under the rental storage agreement. The facts were fundamental to each cause of action for the alleged wrongful lockout. The trial court sustained the demurrers without leave to amend, finding that appellant had failed to establish that the defects in the complaint could be cured by further amendments. Appellant filed a timely notice of appeal from the judgment that dismissed his complaint in its entirety.

DISCUSSION

A. Standard of Review

In reviewing the trial court's ruling on a demurrer, "we look to the 'properly pleaded factual allegations' of the operative complaint 'read in light of' any 'judicially noticeable facts' and 'factual concessions' of the plaintiff." (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 506, fn. 1.) "'[W]e examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any theory, such facts being assumed true for this purpose. [Citations.]' [Citation.]" (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) The assumption of truth does not apply to contentions, deductions, or conclusions of law and fact. (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) We will affirm the ruling if any proper ground exists for sustaining the demurrer. (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031.)

We begin by noting that the first amended complaint is unclear. Appellant's opening brief similarly lacks clarity. In addition, with the possible exception of the cause of action for breach of contract, appellant does not address the sufficiency of any of the causes of action in the first amended complaint.[4]

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[4] Rather than separately briefing the issues on the remaining causes of action on the merits, appellant asserts the trial court erred in not addressing the individual claims. Respondents note that because appellant is representing himself this court will take "considerable" measures to aid appellant in developing and proposing arguments to reverse the trial court's ruling.

A party choosing self-representation is not entitled to any greater consideration than other litigants and attorneys. (*Rappleyea v. Campell* (1994) 8 Cal.4th 975, 984-985.)

Appellant also asserts that the trial court erred in determining that respondents' conduct under the SSSFA did not entitle appellant to damages. Because there was no claim for damages in the first amended complaint, we presume that appellant is asserting that the statutory violations under the SSSFA supported grounds for an additional opportunity to amend the complaint.

B. The Breach of Contract

The elements of a breach of contract cause of action are: the contract; appellant's performance or excuse for nonperformance; respondents' breach; and resulting damages. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 13171, 1388.)

The storage rental agreement which was attached to the first amended complaint shows that the rent was due on the first of each month. The first amended complaint alleges that appellant was locked out of the property on or around October 7, 2013, and that an overlock was placed on his unit by October 11, 2013. The first amended complaint does not allege that the October 2013 rent was paid prior to the lockout. Appellant concedes in the opening brief that he has not actually paid the October 2013 rent. "'[I]t is elementary that one party to a contract cannot compel another to perform while he himself is in default.'" (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1387.) Appellant's performance of his obligations under the contract is an

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"Under the law, a party may choose to act as his or her own attorney. [Citations.] '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation]' [Citation.]" (*Nwoso v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) "A pro. per. litigant is held to the same restrictive procedural rules as an attorney." (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193.)

We, therefore, confine our discussion to the issues raised by appellant in the opening brief concerning the breach of contract cause of action. Appellant has waived any arguments concerning the sufficiency of the allegations as to the remaining claims (conversion, trespass and forcible detainers, invasion of privacy, fraud, intentional infliction of emotional distress and negligence) because appellant did not address any of them on the merits. (See *Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1115.)

essential element of the cause of action. (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614.)

The contract claim was deficient as a matter of law because appellant did not allege that he had paid rent on the storage unit. Indeed, the litigation between the parties arose because appellant failed to pay rent on the storage unit under the terms of the agreement. Furthermore, the first amended complaint does not allege any facts showing that that appellant was excused from paying the October 2013 rent. There are also no allegations that respondents hindered appellant from paying the October 2013 rent or at any time when the parties were litigating the SSSFA in small claims court. Under those circumstances, the trial court properly sustained the demurrer to the breach of contract claim.

C. Leave to Amend

Appellant asserts he should have been granted leave to amend the complaint to cure the deficiencies in the complaint. We review a judgment of dismissal entered after a demurrer has been sustained without leave to amend for an abuse of discretion. (*City of Dinuba v. County of Tulare*, *supra*, 41 Cal.4th 859, 865.) Because the allegations of the first amended complaint are insufficient as a matter of law, appellant has the burden of proving an amendment can cure the defect by identifying some legal theory or stating facts which would change the legal effect of the pleading. (*Hernandez v. City of Pomona*, *supra*, 46 Cal.4th 501, 520, fn. 16.)

Appellant claims he had no obligation to make the October 2013 rental payment in a timely manner because respondents locked him out of the facility in violation of the SSSFA. Appellant claims that he should be allowed to litigate whether he had the right to sue for contract damages because he had a statutory right under the SSSFA to "at least 29 days of unfettered and uninterrupted access" to the property even if he was in default on the rental payment. Respondents, therefore, could not deny appellant access to the unit until he was 30 days in arrears. Neither of these theories or purported facts can cure the defects in the complaint.

Appellant implies that the SSSFA confers a statutory cause of action on defaulting tenants to pursue claims against owners who did not strictly comply with the SSSFA. We are not persuaded that such a remedy exists. The purpose of the SSSFA is "to provide self-storage facility owners with 'an effective remedy against defaulting customers.'" (*Vitug v. Alameda Point Storage, Inc.* (2010) 187 Cal.App.4th 407, 415.) The SSSFA contains a comprehensive statutory scheme for each contract for renting a storage space. The storage contract must be in writing. (§ 21712, subd. (a).) The contract must contain "a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid for 14 consecutive days and that such actions are authorized by this chapter." (*Ibid*.)

Section 21702 provides: "The owner of a self-service storage facility and his or her heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at a self-service storage facility for rent, labor, late payment fees, or other charges, present or future, incurred pursuant to the rental agreement and for expenses necessary for the preservation, sale, or disposition of personal property subject to the provisions of this chapter. The lien may be enforced consistent with the provisions in this chapter."

Section 21703 provides: "If any part of the rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address and to the alternative address specified in subdivision (b) of Section 21712." The notice must contain specific information including: an itemized statement showing the sums due and the date when the sums became due; a statement that the tenant's right to use the storage space will terminate on a specified date not less than 14 days after mailing of the notice, unless the amount due is paid prior to that date; notice that the tenant will be denied access to the storage space after the termination date if the amount is not paid, and the owner's information for the tenant to respond to the notice. (§ 21703, subds. (a)-(d).)

"If the notice has been sent as required by Section 21703 and the total sum due has not been paid within 14 days of the termination date specified in the preliminary lien notice, the lien imposed by this chapter attaches as of that date." (§ 21705, subd. (a).) The owner then has the right to deny the occupant access to the space, enter the space, and remove the property to a place of safekeeping. (§ 21705, subd. (a)(1)-(3).) After the lien has attached, the owner must send the tenant a notice of lien sale indicating, among other things, that the property will be sold after a specified date no less than 14 days from the date of the mailing of the notice unless the tenant executes a declaration in opposition to the lien sale. (§ 21705, subd. (b)(1)(C).) The notice of lien also must advise the tenant that the full use of the space may be regained by paying the full lien amount prior to the date specified in the notice. (§ 21705, subd. (b)(1)(D).) An occupant may object to the sale by filing a declaration. (§§ 21704, 21705.) If an occupant files an objection, the owner is required to file an action to enforce the lien. (§ 21710.)

None of the provisions in the SSSFA can be construed in the manner suggested by appellant. Nothing in the provisions of the SSSFA suggest that appellant has a statutory claim for violations of its provisions. Therefore, we cannot conclude that appellant's default and subsequent failure to pay rent for the storage facility provides a basis for a complaint against respondents for violation of the SSSFA.

There is no basis for allowing subsequent amendments to a complaint, which was barred as a matter of law. Accordingly, we conclude the trial court did not abuse its discretion in refusing to allow appellant to further amend the complaint because he could not cure the defects. (*Hernandez v. City of Pomona*, *supra*, 46 Cal.4th 501, 522.) [5]

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[5] Respondents raise the issue of whether the small claims action bars this action on res judicata principles. But we do not need to reach it.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

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BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.